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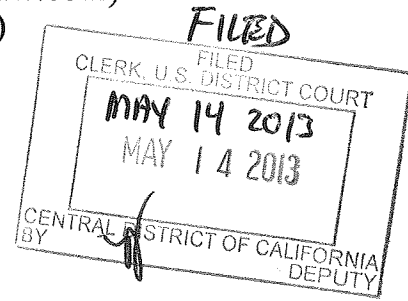
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Tech-4-Kids, Inc.



UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

TECH-4-KIDS, INC.,

Plaintiff,

vs.

SPORT DIMENSION, INC.,

Defendant.

CASE NO. 2:12-CV-06769-PA-AJW

**PLAINTIFF TECH-4-KIDS'
STATEMENT OF GENUINE
ISSUES IN OPPOSITION TO
SPORT DIMENSION'S MOTION
FOR SUMMARY JUDGMENT**

[Opposition, Evidentiary Objections,
Declarations of Michael Lawrence, Brad
Pedersen and Thomas Neches Filed
Concurrently herewith]

SPORT DIMENSION, INC.,

Counterclaimant,

vs.

TECH-4-KIDS, INC.,

Counterdefendant.

DATE: June 3, 2013

TIME: 1:30 p.m.

CTRM: 15

Judge: Hon. Percy Anderson

FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER

**PLAINTIFF'S STATEMENT OF GENUINE ISSUES IN OPPOSITION TO
SPORT DIMENSION'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56-2, Plaintiff and Counter-Defendant Tech-4-Kids, Inc. ("T4K"), hereby submits this Statement of Genuine Disputes In Opposition to Defendant and Counterclaimant Sport Dimension, Inc.'s ("Sport Dimension") Motion for Summary Judgment.

	<u>SPORT DIMENSION'S ALLEGED UNCONTROVERTED FACTS</u>	<u>OBJECTION AND RESPONSE</u>
1. 8 9 10 11 12 13 14 15	Tech-4-Kids, Inc. ("T4K" or "Plaintiff") filed the initial complaint in this action on December 6, 2011, in the District of Maryland, asserting claims of patent infringement and misappropriation of confidential business information against Sport Dimension and its customer Costco Wholesale Corp. ("Costco").	Irrelevant. Fed. R. Evid. 401, 402, 403.
2. 17 18 19 20 21 22 23 24 25	On August 17, 2012, T4K transferred this case to the Central District of California and filed the First Amended Complaint ("FAC") which dropped the claim for patent infringement and claims against Costco, and asserted for the first time common law claims of fraud and interference with prospective economic advantage, as well as misappropriation of trade secrets.	Irrelevant. Fed. R. Evid. 401, 402, 403.
3. 27	On March 4, 2013, more than a year after filing its initial complaint, T4K's Second	Irrelevant. Fed. R. Evid. 401, 402, 403.

1	Amended Complaint ("SAC") was entered	
2	in this action.	
3	4. Through the SAC, T4K added four entirely	Undisputed.
4	new claims and the President of Sport	
5	Dimension, Kurt Rios, in his individual	
6	capacity.	
7	5. The SAC added an allegation that a	Undisputed.
8	contract existed between Sport Dimension	
9	and T4K, and that Sport Dimension	
10	breached that contract.	
11	6. The SAC also added claims for breach of	Undisputed.
12	the implied covenant of good faith and fair	
13	dealing and promissory estoppel and added	
14	a second claim for fraud.	
15	7. Sport Dimension has been in business for	Irrelevant. Fed. R. Evid. 401, 402,
16	16 years, and is located in Carson,	403.
17	California.	
18		
19		
20		
21	8. The President of Sport Dimension is Kurt	Undisputed.
22	Rios.	
23	9. Sport Dimension's products include Body	Disputed: Sport Dimension did not
24	Glove™ wetsuits, Body Glove™ body	sell products in the snow bike
25	boards, Body Glove personal floatation	category until after seeing T4K's
26	devices, Snow Slider, Yamaha™ Snow	product.
27	bike, and Sea-doo™ sea scooters.	SD's Evidence: Rios Decl. ¶ 5.

1		T4K's Evidence: Lawrence Decl.
2		Ex. C (Rios Tr. 39:9-23).
3	10. Sport Dimension began selling snow-	Irrelevant. Fed. R. Evid. 401, 402,
4	related products including snow sliders in	403. Vague and ambiguous as to the
5	2002.	term "snow-related products" and
6		"snow sliders." Fed. R. Evid. 403.
7		Disputed: Sport Dimension did not
8		sell products in the snow bike
9		category until after seeing T4K's
10		product.
11		SD's Evidence: Rios Decl. ¶ 5.
12		T4K's Evidence: Lawrence Decl.
13		Ex. C (Rios Tr. 39:9-23).
14	11. Sport Dimension has relationships with	Vague and ambiguous as to the term
15	numerous retailers through which its	"relationship." The term
16	products are sold, including Costco USA,	"relationship" as used in this
17	Sam's Club, The Sports Authority, and	context is misleading, confusing and
18	Dick's Sporting Goods.	prejudicial. Fed. R. Evid. 403.
19		Disputed: Sport Dimension did not
20		have relationships with those
21		retailers in the snow bike category.
22		SD's Evidence: Rios Decl. ¶ 5.
23		T4K's Evidence: Lawrence Decl.
24		Ex. C (Rios Tr. 39:9-23).
25	12. Sport Dimensions relationships with the	Vague and ambiguous as to the term
26	retailers listed above existed prior to Sport	"relationship." The term
27	Dimension's initial contact with Plaintiff.	"relationship" as used in this
28		context is misleading, confusing and

1		prejudicial. Fed. R. Evid. 403.
2		Disputed: Sport Dimension did not
3		have relationships with those
4		retailers in the snow bike category.
5		SD's Evidence: Rios Decl. ¶ 5.
6		T4K's Evidence: Lawrence Decl.
7		Ex. C (Rios Tr. 39:9-23).
8	13. T4K is a Canadian company that has been	Misstates the evidence, irrelevant
9	in business for 5 years.	and contradicts Alleged Fact No.
10		34. Fed. R. Evid. 403.
11	14. In early 2009, T4K sold snow bikes in	Undisputed.
12	various retail stores in Canada and the	
13	United States.	
14	15. The President of T4K is Brad Pedersen.	Undisputed.
15	16. T4K was established in 2009 after Sport	Vague and ambiguous as to the
16	Dimension started selling snow products.	terms "established" and "snow
17		products"; irrelevant, contradicts
18		Alleged Fact No. 30). Fed. R. Evid.
19		106, 401, 402, 403, 901, 1002.
20		Disputed: Sport Dimension did not
21		sell products in the snow bike
22		category until after seeing T4K's
23		product. SD's Evidence: Rios Decl.
24		¶ 5.
25		T4K's Evidence: Lawrence Decl.
26		Ex. C (Rios Tr. 39:9-23).
27	17. T4K is a Canadian company that designs,	Undisputed.

1	manufacturers, and sells toys and other	
2	products for children.	
3	18. The product at issue is a snow bike product	Lacks foundation, argumentative,
4	for children, which is similar to snow sleds	mischaracterizes testimony, best
5	but have three skis.	evidence. Fed. R. Evid. 106, 403,
6		901, 1002.
7		Disputed: Weenink's definition is
8		much more detailed.
9		SD's Evidence: Brooks Decl. Ex. 2
10		at 67:9-68:9.
11		T4K's Evidence: Brooks Decl. Ex.
12		2 at 67:9-68:9. ("It's a tri-ski design
13		of sled, metal frame, adjustable seat,
14		handlebars licensed, nose piece,
15		suspension, twin-tip skis, tow rope,
16		licensed graphics.").
17	19. The Yamaha snow bike was intentionally	Lacks foundation, argumentative,
18	designed to look different than T4K's snow	improper lay witness opinion,
19	bikes.	mischaracterizes testimony. Fed. R.
20		Evid. 106, 602, 701, 901.
21		SD's Evidence: Rios Decl. ¶ 13.
22		T4K's Evidence: Lawrence Decl.
23		Ex. V. (Rios Ex. 40) (SDI 001012-
24		13).
25	20. The Yamaha snow bike is covered by U.S.	Irrelevant. Fed. R. Evid. 401, 402,
26	Patent No. D662010	403.
27	21. The parties explored the possibility of	Lacks foundation, argumentative,
28		

	<p>entering into a distributing agreement during March to July 2009. Most of these conversations took place by email and some by phone. The parties however do not recall what contract terms were proposed on the phone.</p>	<p>mischaracterizes testimony, best evidence. Fed. R. Evid. 106, 403, 901, 1002.</p> <p>Disputed: All terms are contained in the parties' email exchange.</p> <p>SD's Evidence: Brooks Decl. Ex. 1 at 271:20-274:24; Ex. 24 at 241:18-21.</p> <p>T4K's Evidence: Lawrence Decl. Ex. W.</p>
22.	<p>Consumer Products Safety Improvement Act on 2008 testing and compliance is a requirement in the U.S. for the protection of children.</p>	<p>Irrelevant. Fed. R. Evid. 401, 402.</p> <p>Disputed: CPSIA did not apply to products manufactured before November 2008. T4K's 2009 products were CISIA certified.</p> <p>SD's Evidence: Brooks Decl. Ex. 3 at 126:11-128:3; Ex. 24 at 204:7-206:1.</p> <p>T4K's Evidence: Consumer Products Safety Improvement Act of 2008; Pedersen Decl. ¶ 31.</p>
23.	<p>T4K did not ask Sport Dimension to sign a non-disclosure agreement or expressly ask that any specific information be treated as a trade secret.</p>	<p>Vague and ambiguous as to the terms "expressly." Lacks foundation. Fed. R. Evid. 403, 901.</p> <p>Disputed: T4K did ask that information be treated as a trade secret.</p> <p>SD's Evidence: Rios Decl. ¶ 10.</p>

1		T4K's Evidence: Lawrence Decl. Ex. D (Pedersen Tr. 168:10-169:20; 177:13-15).
2		
3		
4	24. During the time of Costco's buying	Foundation, irrelevant,
5	decision in 2011, however, another version	argumentative, mischaracterizes
6	of T4K's snow bike was subject to a safety	evidence. Fed. R. Evid. 106, 401,
7	product recall that required recall of T4K	402, 403, 901, 1002.
8	products that Costco U.S. sold in the U.S.	Disputed: Misstates document,
9		which demonstrates that the Snow
10		MX, the product subject to the
11		voluntary recall, was still in the
12		running for sale to Costco at that
13		time that Costco decided not to
14		purchase the Snow Moto. The
15		recalled product was not a version
16		of the snow bike, as SD admits in
17		Alleged Fact No. 33.
18		SD's Evidence: Brooks Decl. Ex.
19		28.
20		T4K's Evidence: Brooks Decl. Ex.
21		28; SD's statement of
22		uncontroverted fact no. 33 (listing
23		all versions of the snow bike).
24	25. Since T4K's discussion with Sport	Lacks foundation, argumentative,
25	Dimension, T4K's snow bike business in	mischaracterizes evidence, best
26	the U.S. has increased. Sales went from	evidence. Fed. R. Evid. 106, 403,
27	\$2,130,626 in 2009 to \$3,535,068 in 2011,	901, 1002.
28	and \$4,275,187 in 2012	Disputed: T4K suffered lost sales.

		Declaration of Thomas Neches, Exh. A.
26.	In fact, at the time of filing this action in this district in 2012, T4K had its biggest year in sales.	Lacks foundation, irrelevant, argumentative, mischaracterizes evidence. Fed. R. Evid. 106, 401, 402, 403, 901, 1002. Disputed: T4K suffered lost sales. Declaration of Thomas Neches, Exh. A.
27.	In June 2012, T4K wrote to licensor Bombardier Recreational Products, Inc. ("BRP") from which T4K and Sport Dimension both license their Ski-Doo products, trying to persuade it to not license to Sport Dimension or its manufacturing sourcing agent, Stallion, citing a patent infringement claim against the companies.	Lacks foundation, irrelevant, argumentative, best evidence. Fed. R. Evid. 401, 402, 403, 901, 1002. Disputed: Cited testimony does not support the alleged fact.
28.	T4K served subpoenas Sport Dimension's customers, including Costco, Sam's Club, Big 5, Sports Chalet, Academy Sport, Michigan Sport, Target, and Yamaha.	Disputed: Yamaha is a licensor, not a customer.
29.	T4K and Sport Dimension are competitors.	Disputed: T4K and SD were not competitors until SD began selling its snow bike. Lawrence Decl. Ex. A (Lin Tr. 227:11-22).
30.	In 2007 or 2008, T4K began selling a	Undisputed.

1	product for children called a snow bike.	
2	31. These snow bikes are snow sleds for	Undisputed.
3	children that are designed to appear like a	
4	snowmobile, but are not motorized.	
5	32. Sport Dimension became aware of	Speculation, lack of personal
6	Plaintiff's snow bike when Rios saw one at	knowledge, mischaracterizes
7	a retail store in early 2009.	testimony. Fed. R. Evid. 403, 602.
8		Disputed: It was Lin who
9		discovered T4K's snow bike and
10		not Rios.
11		SD's Evidence: Brooks Decl. Ex. 1
12		at 36:15-22.
13		T4K's Evidence: Lawrence Decl.
14		Ex. A (Lin Tr. 232:24-233:3).
15	33. T4K sells three different versions of its	Undisputed.
16	snow bike — the X-Games, Ski-doo and	
17	Polaris.	
18	34. Both the X-Games and Ski-doo snow bikes	Undisputed.
19	were on sale in 2007 or 2008 prior to	
20	discussions with Sport Dimension.	
21	35. Around March 3, 2009, Rios contacted	Undisputed.
22	Plaintiff's President, Brad Pedersen	
23	("Pederson") and the parties began	
24	exploring a potential distributor	
25	relationship whereby Sport Dimension	
26	would consider serving as Plaintiff's U.S.	
27	Distributor for Plaintiff's snow bike	

1	product.	
2	36. Mr. Rios proposed several different ideas	Undisputed.
3	of ways the companies could work	
4	together, including distributing T4K's	
5	product in the U.S., or obtaining a sub-	
6	license or buying directly from T4K at a	
7	pre-determined price.	
8	37. On March 4, 2009, Mr. Pedersen replied to	Undisputed.
9	Mr. Rios' email and stated that while T4K	
10	had a "strong position in Canada," the U.S.	
11	had been "challenging."	
12	38. Mr. Pedersen mentioned success at Wal-	Undisputed.
13	Mart U.S. who purchased the X- Games	
14	snow bike in 2008 and Dick's Sporting	
15	Goods who purchased the Ski-doo snow	
16	bike in 2008.	
17	39. In a subsequent email, Mr. Pedersen tells	Undisputed.
18	Mr. Rios that the T4K snow bikes retails	
19	for between \$79 - \$120 and asks Mr. Rios	
20	tell him what Sport Dimension would need	
21	to purchase the snow bikes at to "make the	
22	numbers work."	
23	40. At no time does Mr. Pedersen mention that	Vague and ambiguous as to the
24	the conversations or any of the information	terms "the conversations" and "the
25	exchanged should be confidential or treated	information exchanged."
26	as a trade secret.	Fed. R. Evid. 901.
27		Disputed:

		SD's Evidence: Rios Decl. ¶ 10. T4K's Evidence: Lawrence Decl. Ex. D (Pedersen Tr. 168:11-169:20).
41.	On March 8, 2009, Mr. Rios sends Mr. Pedersen an email stating that he had reviewed the "cost sheet" that Mr. Pedersen provided and worked backwards from retail to cost so that Sport Dimension would need to purchase the snow bike from T4K for \$30 in order to "put some sort of a deal in place or arrangement."	Undisputed.
42.	The cost sheet provided by Mr. Pedersen detailed the dimensions of the X-Games snow bike product, the carton size, container quantities, and factory information.	Argumentative, mischaracterizes content of Ex. 5, hearsay, best evidence. Fed. R. Evid. 106, 403, 802, 1002. Disputed: The document contained additional information including price and cost. SD's Evidence: Brooks Decl. Ex. 5. T4K's Evidence: Brooks Decl. Ex. 5.
43.	Around 2010, T4K stopped using the factory disclosed in this "cost sheet."	Undisputed.
44.	In addition, Mr. Pedersen did not agree to the price proposed by Mr. Rios in his March 8, 2009 email.	Undisputed.

1	45.	On March 9, 2009, Mr. Pedersen replied suggesting several terms, including a minimum commitment whereby Sport Dimension would commit to a \$100,000 advance that would be deducted from any orders that Sport Dimension would make or in other words a minimum purchase commitment of about 3200 pieces of the sled.	Undisputed.
10	46.	Mr. Pedersen also stated that certain accounts are "off limits" but stated that he needed to check with his sales director regarding Costco.	Undisputed.
14	47.	Mr. Pedersen stated that T4K was interested Sam's Club. Mr. Pedersen also says "if we can agree to these points, I will have a conversation with my chair to confirm the above and if he is in agreement, then I [sic] would draft up a simple MOU to sign.	Undisputed.
21	48.	Mr. Rios did not accept this proposal and on March 10, 2009 stated that with respect to the \$100,000 minimum commitment "this may be a sticking point as we cannot agree to this." Mr. Rios also stated "we will try to sell as much as we can."	Argumentative, mischaracterizes content of Ex. 6, hearsay, best evidence. Fed. R. Evid. 106, 403, 802, 1002. Disputed: Rios stated he would try to sell as much as he could and Pedersen accepted that counter-offer.

		<p>SD's Evidence: Brooks Decl. Ex. 6 at 1224.</p> <p>T4K's Evidence: Brooks Decl. Ex. 6 at 1224, ¶¶ 1, 3; Brooks Decl. Ex. 21 at 67.</p>
49.	On March 10, 2009, Mr. Pedersen sent Mr. Rios an email stating that T4K wishes to keep Costco Canada in house.	<p>Argumentative, mischaracterizes content of Ex. 6, hearsay, best evidence. Fed. R. Evid. 403, 802, 1002.</p> <p>Disputed: Pedersen wished to keep Costco Canada and Costco U.S. in house.</p> <p>SD's Evidence: Brooks Decl. Ex. 6.</p> <p>T4K's Evidence: Brooks Decl. Ex. 6.</p>
50.	On March 10, 2009, Mr. Rios emailed Mr. Pedersen and stated that they must be able to sell to Costco US for the same price as T4K is selling to Costco Canada.	<p>Disputed: Pedersen wished to keep Costco Canada and Costco U.S. in house.</p> <p>SD's Evidence: Brooks Decl. Ex. 6.</p> <p>T4K's Evidence: Brooks Decl. Ex. 6.</p>
51.	On March 15, 2009 Mr. Pedersen emailed Mr. Rios stating that considering the late date of the season — they will forgo asking for a minimum commitment.	Undisputed.
52.	Mr. Pedersen also proposed a higher price for the snow bikes plus a \$3/snow bike	Undisputed.

1	charge for shipping samples of the X-	
2	Games snow bike to Mr. Rios.	
3	53. On March 16, 2009 Mr. Rios replies to Mr.	Undisputed.
4	Pedersen's proposal by asking whether	
5	Sport Dimension can also obtain samples	
6	of the Polaris and Ski-doo snow bike and	
7	what are the differences between these	
8	models.	
9	54. On March 17, 2009 Mr. Rios emailed Mr.	Argumentative, mischaracterizes
10	Pedersen and stated that "we are good to	content of Ex. 23. Fed. R. Evid.
11	go." and states that an assistant will contact	106, 403.
12	Mr. Pedersen regarding a credit card for the	Disputed: Rios stated: "We are good
13	snow bike samples.	to go. We accept your new higher
14		prices listed below along with \$3.00
15		service fee for shipping samples."
16		SD's Evidence: Brooks Decl. Ex.
17		23.
18		T4K's Evidence: Brooks Decl. Ex.
19		23.
20	55. Mr. Rios believed that he was accepting	A party's belief as to the terms of an
21	Mr. Pedersen's price on the snow bike	agreement in hindsight is irrelevant.
22	samples.	<i>See Founding Members of the</i>
23		<i>Newport Beach Country Club v.</i>
24		<i>Newport Beach Country Club, Inc.,</i>
25		109 Cal. App. 4th 944, 955 (2003)
26		("parties' undisclosed intent or
27		understanding is irrelevant to
28		contract interpretation.");Fed. R.

1		Evid. 402, 403.
2		Disputed: Sport Dimension
3		contends it attempted to sell T4K's
4		bike to several retailers following
5		Rios's acceptance of the contract.
6		SD's Evidence: Brooks Decl. Ex.
7		24 at 254:4-21.
8		T4K's Evidence: Lawrence Decl.
9		Ex. J (Richards Tr. 104:23-106:24);
10		Ex. N.
11	56. On March 18, 2009 Mr. Pedersen sent an	Undisputed.
12	email to Mr. Rios informing him that T4K	
13	does not have enough samples of the Ski-	
14	doo snow bike and are going to Canadian	
15	Tire to purchase samples.	
16	57. On March 26, 2009 Mr. Rios sent an email	Lacks foundation, argumentative,
17	to Mr. Pedersen asking for clarification on	mischaracterizes content of Ex. 7,
18	whether T4K is calling on Costco USA.	hearsay. Fed. R. Evid. 403, 802,
19		901.
20		Disputed: Pedersen had already
21		told Rios on multiple occasions that
22		Costco was an off-limits account
23		and Rios obviously understood this
24		or he would not have sent the March
25		26, 2009 email to Pedersen.
26		SD's Evidence: Brooks Decl. Ex. 7.
27		T4K's Evidence: Lawrence Decl.
28		Ex. E (SDI 001240-47).

1 2 3 4 5 6 7 8 9 10	58. On March 26, 2009 Mr. Pedersen responded to this email stating that "in regards to Costco I will revert back."	Lacks foundation, lacks authentication, argumentative, mischaracterizes content of Ex. 8. Fed. R. Evid. 106, 403, 901. Disputed: The email does not indicate that it is in response to anything. SD's Evidence: Brooks Decl. Ex. 8. T4K's Evidence: Brooks Decl. Ex. 8.
11 12 13 14 15 16 17 18 19 20 21 22 23	59. Mr. Rios replied and asked Mr. Pedersen to let him know as soon as he could about Costco USA.	Lacks foundation, argumentative, mischaracterizes content of Ex. 9, hearsay, best evidence. Fed. R. Evid. 403, 802, 901, 1002. Disputed: Pedersen had already told Rios on multiple occasions that Costco was an off-limits account and Rios obviously understood this or he would not have sent the March 26, 2009 email to Pedersen. SD's Evidence: Brooks Decl. Ex. 8. T4K's Evidence: Lawrence Decl. Ex. E (SDI 001240-47).
24 25 26 27 28	60. On March 26, 2009 Mr. Pedersen sends an email to Mr. Rios asking for Sport Dimension's corporate information so he can complete a memorandum of understanding ("MOU").	Lacks foundation, misstates evidence. Fed. R. Evid. 106, 901. Disputed: Pedersen testified that the email chain itself functioned as the MOU between the parties

		<p>because it contained all of the material terms discussed, including products, price, accounts, quantity, and marketing support.</p> <p>SD's Evidence: Brooks Decl. Ex. 1 at 150:4-14; Ex. 7.</p> <p>T4K's Evidence: Lawrence Decl. Ex. D (Pedersen Tr. at 151:13-154:2).</p>
61.	Mr. Pedersen never completed an MOU or sent Mr. Rios a MOU.	<p>Disputed: Pedersen followed up multiple times after the parties entered the contract and understood that an MOU was completed.</p> <p>SD's Evidence: Brooks Decl. Ex. 1 at 151:24-152:2.</p> <p>T4K's Evidence: Lawrence Decl. Ex. D (Pedersen Tr. at 151:13-154:2).</p>
62.	On March 27, 2009, Mr. Rios was emailed a power point presentation that contains an image and a short description of the key features of all three of T4K's snow bikes - the Ski-doo, X-Games and Polaris.	<p>Misstates the evidence. Fed. R. Evid. 403.</p> <p>Disputed: The presentation contained information relating to T4K's unreleased, forthcoming products and their new features. Rios and Pedersen both testified that retailers do not share share one vendor's information with another vendor.</p>

1		SD's Evidence: Brooks Decl. Ex. 10.
2		
3		T4K's Evidence: Brooks Decl. Ex. 10; Lawrence Decl. Ex. D (Pedersen Tr. 205:11-14; 245:8-246:7);
4		Lawrence Decl. Ex. C (Rios Tr. 170:11-16).
5		
6		
7		
8	63. On March 27, 2009, Mr. Pedersen emails Mr. Rios a "recap" of the X- Games snow bike performance at Wal-Mart Canada and Wal-Mart US.	Undisputed.
9		
10		
11		
12	64. On March 31, 2009 Mr. Rios sent Mr. Pedersen an email asking whether the T4K snow bikes are CPSIA approved.	Lacks foundation, irrelevant, misleading and confusing, hearsay, incomplete evidence. Fed. R. Evid.403, 802, 901.
13		
14		
15		
16	65. CPSIA testing and compliance is a requirement in the U.S. for the protection of children.	Irrelevant, misleading and confusing, improper expert opinion. Fed. R. Evid. 401, 402, 403, 702. Disputed: CPSIA was not required for products manufactured before November 2008.
17		SD's Evidence: Brooks Decl. Ex. 3 at 126:11-128:23.
18		T4K's Evidence: Brooks Decl. Ex. 12; The Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314, 122 Stat. 3016; Pedersen Decl. ¶ 31.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	66. A product would never be presented to a buyer or potential customer if it was not CPSIA approved.	Vague and ambiguous as to the term "a product." Lacks foundation, irrelevant, misleading and confusing, argumentative, speculative. Fed. R. Evid. 401, 402, 403, 702. Disputed: CPSIA was not required for products manufactured before November 2008. Moreover, SD contends it presented the products to its customers. SD's Evidence: Brooks Decl. Ex. 3 at 128:25-128:15; Ex. 24 at 204-205. T4K's Evidence: Brooks Decl. Ex. 12; The Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314, 122 Stat. 3016; Pedersen Decl. ¶ 31; Lawrence Decl. Ex. J (Richards Tr. 104:23-106:24); Ex. N.
21 22 23 24 25 26 27 28	67. On April 8, 2009 Mr. Pedersen sent an email to Mr. Rios stating that the snow bikes are not CPSIA approved but that T4K planned on completing the approval for the coming year.	Lacks foundation, irrelevant, misleading, incomplete evidence. Fed. R. Evid. 401, 402, 403. Disputed: CPSIA was not required for products manufactured before November 2008. SD's products were CPSIA approved for 2009. Moreover, SD contends it presented

1		the products to its customers. SD's
2		Evidence: Brooks Decl. Ex. 23.
3		T4K's Evidence: Brooks Decl. Ex.
4		12; The Consumer Product Safety
5		Improvement Act of 2008, Pub. L.
6		No. 110-314, 122 Stat. 3016;
7		Pedersen Decl. ¶ 31; Lawrence
8		Decl. Ex. J (Richards Tr. 104:23-
9		106:24); Ex. N.
10	68. In April, 2009 Mr. Rios sent an email to	Lacks foundation, hearsay. Fed. R.
11	Roger Stakley, the buyer at Sam's Club in	Evid. 802, 901.
12	the U.S. regarding T4K's Ski-doo snow	
13	bike.	
14	69. On April 16, 2009 Mr. Rios emailed Mr.	Lacks foundation, hearsay. Fed. R.
15	Pedersen stating that they are getting close	Evid. 802, 901.
16	to a 100 club test with the T4K Ski-doo	Disputed:
17	snow bike in Sam's Club.	SD's Evidence: Brooks Decl. Ex.
18		14.
19		T4K's Evidence: No evidence has
20		been produced by SD or Sam's
21		Club indicating that Sam's Club
22		(division of Wal-Mart) was
23		interested in a 100 club test.
24		Lawrence Decl. Ex. FF.
25	70. Mr. Rios also asked Todd Richards, Sport	Hearsay. Fed. R. Evid. 802.
26	Dimension's VP of sales contact various	
27	potential customers in the U.S. regarding	
28	T4K's snow bikes including Big 5, 20	

1	Academy Sport, and others.	
2	71. On May 6, Mr. Pedersen wrote to Mr. Rios	Undisputed.
3	asking for a status update.	
4	72. Mr. Rios responded that the price of the	Hearsay. Fed. R. Evid. 802.
5	snow bike was an issue with potential	
6	customers.	
7	73. On July 10, 2009 Mr. Pedersen sent an	Undisputed.
8	email to Mr. Rios stating that because of	
9	the lack of communication he assumes that	
10	nothing is happening.	
11	74. On July 10, 2009, Mr. Rios responded to	Hearsay. Fed. R. Evid. 802.
12	Mr. Pedersen stating that Sam's decided not	Disputed: Rios said "Sorry this did
13	to go forward with the test of the snow	not work out better for both of us,
14	bike, apologized and says "better luck next	this is a good item, and maybe with
15	year."	a better retail climate we will have
16		better luck next year."
17		SD's Evidence: Brooks Decl. Ex.
18		17.
19		T4K's Evidence: Brooks Decl. Ex.
20		17.
21	75. The parties did not have any other	Vague and ambiguous as to the term
22	conversations between July, 2009 and the	"any other conversation."
23	present lawsuit.	Mischaracterizes testimony. Fed. R.
24		Evid. 106, 403.
25	76. Having not heard from Sport Dimension,	Incomplete testimony,
26	Mr. Pedersen assumed that Sport	mischaracterizes testimony. Fed. R.
27	Dimension was not interested in pursuing	Evid. 106, 403.
28		

1	the business.	Disputed: Mr. Pedersen expected Mr. Rios to honor his obligations under the contract. SD's Evidence: Brooks Decl. Ex. 1 at 289:21-290:5. T4K's Evidence: Lawrence Decl. Ex. D (Pedersen Tr. 290:10-295:7).
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9	77. The parties never discussed or came to an	Incomplete testimony,
10	agreement regarding the time frame of any	mischaracterizes testimony,
11	potential agreement.	irrelevant. Fed. R. Evid. 106, 402, 403.
12		Disputed: Mr. Rios said "Sorry this
13		did not work out better for both of
14		us, this is a good item, and maybe
15		with a better retail climate we will
16		have better luck next year."
17		SD's Evidence: Brooks Decl. Ex. 1
18		at 123:19-124:3.
19		T4K's Evidence: Brooks Decl. Ex.
20		17.
21		
22	78. Nor did the parties discuss or some [sic] to	Irrelevant, incomplete testimony,
23	an agreement regarding termination of the	mischaracterizes testimony. Fed. R.
24	potential agreement.	Evid. 106, 401, 402, 403.
25	79. In addition, a minimum purchase quantity	Vague and ambiguous as to the term
26	of 3,200 pieces was a key term of the	"key term." Irrelevant,
27	potential agreement that was not agreed to	argumentative, incomplete
28	by Mr. Rios.	testimony, mischaracterize

1		testimony. Fed. R. Evid. 106, 401,
2		402, 403.
3		Disputed: The quantity was not a
4		“key term” and Rios agreed to sell
5		as much as he could.
6		SD’s Evidence: Brooks Decl. Ex. 1
7		at 140:9-141:11.
8		T4K’s Evidence: Lawrence Decl.
9		Ex. D (Pedersen Tr. 140:9-141:21).
10	80. In the Fall 2009, T4K sold under 1000	Undisputed.
11	units of its Ski-doo snow bike to Costco	
12	U.S. as a "test."	
13	81. Subsequently, Costco U.S. purchased	Undisputed.
14	T4K's Polaris snow bike for the 2010/2011	
15	snow season.	
16	82. Costco U.S. did not purchase new units of	Disputed: Costo U.S. purchased
17	T4K's snow bike.	new units of T4K’s snow bike in
18		2009 and 2010.
19		SD’s Evidence: DE 84 ¶ 49.
20		T4K’s Evidence: Pedersen Decl. ¶
21		9.
22	83. Costco reviews its buying decisions every	Undisputed.
23	year.	
24	84. Costco U.S. did not tell T4K that it would	Incomplete testimony,
25	purchase its snow bike for the 2011/2012	mischaracterizes testimony. Fed. R.
26	snow season.	Evid. 106, 403.
27		Disputed: Under normal
28		

		<p>circumstances, Costco would re-purchase a product that had such a high level of success the preceding year.</p> <p>SD's Evidence: Brooks Decl. Ex. 2 at 151:20-152:3; Ex. 3 at 129:19-130:4; Nelson Decl. ¶ 3.</p> <p>T4K's Evidence: Lawrence Decl. Ex. G (Smick Tr. 112:9-25).</p>
85.	Costco U.S. did buy back T4K's unsold Polaris snow bikes in 2011/2012.	Undisputed.
86.	In February, 2010, T4K began marketing its snow products, including its snow bikes to U.S. customers, including Big 5, Sports Chalet and others.	<p>Lacks foundation and misstates evidence. Fed. R. Evid. 403, 901.</p> <p>Disputed: T4K did not market its snow bikes to Big 5, Sports Chalet or any of the sporting goods retailers with whom SD had relationships.</p> <p>SD's Evidence: Brooks Decl. Ex. 18.</p> <p>T4K's Evidence: Lawrence Decl. Ex. L (Weenink Tr. 131:17-132:25.)</p>
87.	Around April 21, 2010, T4K submitted a quote to Blain's Supply, Inc. for its X-Games snow bike.	Lacks foundation. Fed. R. Evid. 901.
88.	Blain's is located in Wisconsin.	Lacks foundation. Fed. R. Evid. 901.

1	89.	Blain is also a Sport Dimension customer and purchased a snow bike from Sport Dimension in 2012.	Lacks foundation; hearsay. Fed. R. Evid. 802, 901.
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3			
4	90.	On March 9, 2011, T4K submitted a quote to Academy Sport for its X-Games snow bike.	Lacks foundation. Fed. R. Evid. 901.
5			
6			
7	91.	Academy is an account that Sport Dimension had previously called on in regarding T4K's snow bike.	Lacks foundation, hearsay. Fed. R. Evid. 802, 901. Disputed: Rios verified under oath SD's initial interrogatory response which stated the only customer SD approached regarding T4K's products was Sam's Club. SD's Evidence: Brooks Decl. Ex. 20. T4K's Evidence: Lawrence Decl. Ex. W (Interrogatory No. 6).
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18	92.	T4K has also sold its snow bike to Costco Canada for six years in a row.	Undisputed.
19			
20	93.	After T4K and Sport Dimension had ceased their discussions, Sport Dimension began discussions with Yamaha Corporation ("Yamaha") to design and develop its own snow bikes.	Disputed: The parties reached an agreement in March 2009. By January 2010, SD already had a competing product 90% completed, and by February 2010, SD was already pursuing a license from Yamaha. SD's Evidence: Rios Decl. ¶ 12.
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		<p>T4K's Evidence: Lawrence Decl. Ex. E (SDI 001240-47); Lawrence Decl. Ex. P (Rios Ex. 37) (SDI 001132); Lawrence Decl. Ex. Q (SDI 001008-09).</p>
94.	<p>In 2011, Sport Dimension offered its snow bikes ("the Yamaha Snow Bike") which were designed in cooperation with Yamaha.</p>	<p>Disputed: SD offered a different competing snow bike to Costco in January 2010. SD was pursuing the Yamaha license in February 2010.</p> <p>SD's Evidence: SD's Evidence: Rios Decl. ¶ 12.</p> <p>T4K's Evidence: Lawrence Decl. Ex. Z (SDI 015735); Lawrence Decl. Ex. P (Rios Ex. 37) (SDI 001132 – 35); Lawrence Decl. Ex. Q (SDI 001008); Ex. V (SDI 0012-13).</p>
95.	<p>The Yamaha Snow Bike is manufactured by factories obtained by Sport Dimension's sourcing agent, Stallion. Stallion and Sport Dimension work together on manufacturing, shipment, and Quality Control and Assurances.</p>	<p>Undisputed.</p>
96.	<p>T4K identifies the following as the trade secret information that Mr. Pedersen conveyed to Mr. Rios: 1) an email with attachment titled "Moto X Recap.doc;" 2) an email chain with attachment titled₂₆</p>	<p>Disputed: T4K's trade secret information also included pricing, cost, margin, customer lists, and unreleased product information.</p> <p>SD's Evidence: Brooks Decl. Ex.</p>

1	"Quote Sheet.xls;" and 3) Contents of	11; Ex. 5; Ex. 21; Ex. 22.
2	email chain with subject line "USA	T4K's Evidence: Lawrence Decl.
3	Distribution."	Ex. AA (T4K's Response to SD's
4		Interrogatory No. 1); Brad Decl. ¶
5		18; Lawrence Decl. Ex. D (Pedersen
6		Tr. 221:5-224:10; 257:5-262:23).
7	97. The Ski-doo and X-Games snow bikes	Vague and ambiguous as to time
8	were already being sold at retail and the	frame. Lack of personal
9	Polaris snow bike was already being	knowledge, mischaracterize
10	offered to potential customers and may	testimony, incomplete testimony.
11	have been shown at trade shows.	Fed. R. Evid. 106, 403, 602.
12		Disputed: The Polaris was not on
13		the market at the time, and the Ski-
14		doo information highlighted new
15		features not yet on the market.
16		SD's Evidence: Brooks Decl. Ex. 3
17		at 50:14-52:17; Ex. 2 at 75:9-77:18.
18		T4K's Evidence: Brooks Decl. Ex.
19		6; Pedersen Decl. ¶ 18; Lawrence
20		Decl. Ex. C (Rios Tr. 147:12-18;
21		170:11-21.), Ex. D (Pedersen Tr.
22		249:1-21).
23	98. The Quote Sheet provided by Mr. Pedersen	Mischaracterizes content of Ex. 5,
24	detailed the dimensions of the X-Games	hearsay, best evidence. Fed. R.
25	snow bike product, the carton size,	Evid. 403, 802, 1002.
26	container quantities, and factory	
27	information.	
28	99. SDI 1201 contains a retail price of \$99.99	Lacks foundation, hearsay, no

1	and a purchase price of \$30 which was	evidence. Fed. R. Evid. 403, 802,
2	supplied by Mr. Rios.	901.
3		Disputed: The document contains
4		additional retail pricing of \$79.99
5		and \$59.99.
6		SD's Evidence: Brooks Decl. Ex.
7		26.
8		T4K's Evidence: Brooks Decl. Ex.
9		26.
10	100. SDI 1201 contains the dimensions of the	Disputed: These dimensions are
11	product itself and dimensions that are	often provided by T4K.
12	provided by the buyer, not T4K.	SD's Evidence: Brooks Decl. Ex. 3
13		at 179:19-185:10.
14		T4K's Evidence: Lawrence Decl.
15		Ex. G (Smick Tr. 57:10-60:7).
16	101. T4K's witness testified that the buyer will	Disputed: This information will
17	specify how containers are loaded.	often be provided by T4K.
18		SD's Evidence: Brooks Decl. Ex. 3
19		at 185:2-7.
20		T4K's Evidence: Lawrence Decl.
21		Ex. G (Smick Tr. 57:10-60:7).
22	102. The Moto X Recap document is	Disputed: This document contains
23	information obtained from Wal-Mart and	detailed metrics about the sell-thru
24	not from T4K. T4K testified that the	rate of T4K's product, average
25	information in the Moto X Recap	number of units sold at stores, and
26	document "Walmart allows you access	marketing information.
27	Retail Link to be able to generate this	SD's Evidence: Brooks Decl. Ex. 2
28	information."	at 124:3-125:7.

		T4K's Evidence: Lawrence Decl. Ex. D (Pedersen Tr. 183:2-186:8; 189:17-190:5); Pedersen Decl. ¶ 18.
103.	T4K's witnesses testified that T4K was able to calculate the cost that Sport Dimension sold its Yamaha snow bike to Costco based on working back from the retail price of the bike sold.	Disputed: T4K's witness stated that it would be guesswork to attempt to calculate cost based on retail price. SD's Evidence: Brooks Dec. Ex. 3 at 92:12-99:20. T4K's Evidence: Lawrence Decl. Ex. G (Smick Tr. 97:17-98:5).
104.	Mr. Pedersen testified that he was skeptical of Sport Dimension from Mr. Rios' initial contact because it was a competitor and had a reputation for being predatory.	Vague and ambiguous as to the term "competitor." Mischaracterizes testimony, incomplete testimony. Fed. R. Evid. 403. Disputed: Pedersen testified that he was initially skeptical of Sport Dimension but then he felt more comfortable after Rios eased his concerns, and he learned that Todd Richards would be involved, because Pedersen had worked with Richards previously. SD's Evidence: Brooks Decl. Ex. 1 at 36:18-41:8. T4K's Evidence: Lawrence Decl. Ex. D (Pedersen Tr. 42:2-19).
105.	Representatives for T4K testified that the type of information that was provided to	Vague and ambiguous as to the term "confidentiality agreement."

1	Sport Dimension is routinely provided to	Mischaracterizes testimony,
2	retailers and distributors without	incomplete testimony. Fed. R. Evid.
3	confidentiality agreements.	403.
4		Disputed: Both Pedersen and Rios
5		agree that retailers do not share
6		vendor information with other
7		vendors.
8		SD's Evidence: Brooks Decl. Ex. 1
9		at 333:12-16; Ex. 2 at 20:10-18; Ex.
10		3 at 32:14-18.
11		T4K's Evidence: Lawrence Decl.
12		Ex. D (Pedersen Tr. 309:22-310:3);
13		Lawrence Decl. Ex. C (Rios Tr.
14		170:11-6).
15	106. In addition, the information may be	Speculative, lack of personal
16	presented at trades shows attended by	knowledge, mischaracterizes
17	members of the press and where anyone	testimony, incomplete testimony.
18	walking by can see or hear the presentation.	Fed. R. Evid. 403, 602.
19		Disputed: Weenink only testified
20		that vice presidents or merchandise
21		managers from retailers would
22		attend the trade shows.
23		SD's Evidence: Brooks Decl. Ex. 3
24		at 28:12-25; 50:23-51:3.
25		T4K's Evidence: Brooks Decl. Ex.
26		3 at 28:12-25; 50:23-51:3.
27	107. T4K maintains that it is an industry	Mischaracterizes testimony,
28	practice to provide this information without	incomplete testimony. Fed. R. Evid.

1	a confidentiality agreement, a T4K witness	403.
2	acknowledged that written agreements used	Disputed: In this industry, retailers
3	to be common in the industry and such	do not share one vendor's
4	written agreements would include	information with another vendor.
5	confidentiality agreements. In fact, he	SD's Evidence: Brooks Decl. Ex. 3
6	currently has at least one such agreement	at 22:7-24:10; 31:12-32:18.
7	with a company	T4K's Evidence: Lawrence Decl.
8		Ex. D (Pedersen Tr. 309:22-310:3);
9		Lawrence Decl. Ex. C (Rios Tr.
10		170:11-6).
11	108. The Yamaha snow bike was sold two years	Disputed: T4K and SD entered into
12	after the brief discussions with T4K.	an agreement in March 2009. In
13		February 2010, it began pursuing
14		Yamaha for a license.
15		SD's Evidence: Rios Decl. ¶ 12.
16		T4K's Evidence: Lawrence Decl.
17		Ex. E (SDI 001240-47); Ex. Q (SDI
18		001008).; Ex. V (SDI 0012-13); Ex.
19		KK (SDI 1015)..
20	109. Costco U.S. affirmed that no confidential	Lacks foundation, lack of personal
21	T4K information was provided to it from	knowledge, improper lay witness
22	Sport Dimension in its bid for Costco's	opinion, improper legal conclusion.
23	business.	Fed. R. Evid. 403, 602, 701, 704.
24		Disputed: SD's pricing to Costco
25		was \$34.20, right below the special
26		wholesale pricing of \$35.50 that
27		Pedersen had extended to SD.
28		SD's Evidence: Nelson Decl. ¶ 8.

1		T4K's Evidence: Lawrence Decl. Ex. U, JJ.
2		
3	110. The parties did not execute a memorandum of understanding because they never agreed on key terms.	Vague and ambiguous as to the term "key terms." Fed. R. Evid. 403. Disputed: The parties memorialized their agreement in March 2009. SD's Evidence: Rios Decl. ¶ 11. T4K's Evidence: Lawrence Decl. Ex D (Pedersen Tr. 150:24-155:19).
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10	111. In February, 2010, T4K began marketing its snow products, including its snow bikes to U.S. customers, including Big 5, Sports Chalet and others	Lacks foundation and misstates evidence. Fed. R. Evid. 403, 901. Disputed: T4K did not market its snow bikes to Big 5, Sports Chalet and other sporting goods retailers with whom SD had relationships. SD's Evidence: Brooks Decl. Ex. 18, 19. T4K's Evidence: Lawrence Decl. Ex. L (Weenink Tr. 131:17-132:25.)
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20	112. T4K's promissory estoppel claim is based on the same email exchange that is the basis for Plaintiffs contract claim.	Best evidence. Fed. R. Evid. 1002. Disputed: The <i>promise</i> underlying T4K's promissory estoppel claim is based on the March 2009 email chain. SD's Evidence: DE 84 at ¶¶ 82-88. T4K's Evidence: DE 84 at ¶¶ 82-88.
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1	113. In April, 2009 Mr. Rios sent an email to	Lacks foundation, hearsay. Fed. R.
2	Roger Stakley, the buyer at Sam's Club in	Evid. 802, 901.
3	the U.S. regarding T4K's Ski-doo snow	
4	bike.	
5	114. Indeed, Costco renews buying decisions	Vague and ambiguous, incomplete
6	every year, and T4K was never told that	testimony, mischaracterizes
7	Costco would purchase the snow bike for	testimony. Fed. R. Evid. 106, 403.
8	the 2011/2012 snow season.	Disputed: Costco gave every
9		indication that it would purchase
10		T4K's snow bike for the 2011/2012
11		season.
12		SD's Evidence: Brooks Decl. Ex. 2
13		at 142:24-143:1 and 151:20-152:6;
14		Ex. 3 at 113:16-114:7; Nelson Decl.
15		¶ 3.
16		T4K's Evidence: See responses to
17		SD's undisputed facts no. 84.
18	115. Mr. Pederson testified that he assumed that	Incomplete testimony,
19	he told Mr. Rios to generally keep their	mischaracterizes testimony. Fed. R.
20	discussion information confidential, or he	Evid. 106, 403.
21	would not have shared the formation.	Disputed: Pedersen asked Rios to
22		keep the information confidential.
23		SD's Evidence: Brooks Decl. Ex. 1
24		at 271:20-274:24.
25		T4K's Evidence: Lawrence Decl.
26		Ex. D (Pedersen Tr. 168:11-169:20;
27		177:13-15).
28	116. T4K claims that the parties entered into an	Disputed: The parties had telephone

1	agreement by way of emails and oral	conversations but the agreement
2	discussions.	itself is contained in the March
3		2009 email exchange.
4		SD's Evidence: DE 84 at ¶¶ 51-59.
5		T4K's Evidence: Lawrence Decl.
6		Ex. E (SDI 001240-47).
7	117. T4K's first claim for fraud is based on the	Undisputed.
8	following representations that Mr. Rios	
9	allegedly made during his negotiations with	
10	T4K: (1) that Sport Dimension was	
11	interested in partnering with T4K to	
12	distribute its snow bikes; (2) that Sport	
13	Dimension would distribute Plaintiff's	
14	snow bikes in the United States; and (3)	
15	that Sport Dimension would not market the	
16	snow bikes to certain retailers, including	
17	Costco U.S. and Costco Canada.	
18	118. T4K's second claim for fraud is (1) that	Undisputed.
19	Sport Dimension was making efforts to	
20	market and sell T4K's snow bike to U.S.	
21	retailers; (2) that Sport Dimension had	
22	made efforts to sell T4K's snow bike to	
23	Sam's Club; (3) that Sam's Club was	
24	interested in conducting a 100 club test of	
25	the snow bike; (4) that there was no interest	
26	in T4K's products; and (5) that Sam's Club	
27	ultimately decided that it was uninterested.	
28	119. www.alibaba.com is a website where ₃₄	Lacks foundation, lack of personal

1	anyone can look up a product and its	knowledge, hearsay. Fed. R. Evid.
2	factory information.	901, 602, 802.
3		Disputed: T4K's factory
4		information is not shown on this
5		document.
6	120. As Mr. Pedersen acknowledged, the only	Incomplete testimony,
7	products that the parties discussed were	mischaracterizes testimony. Fed. R.
8	T4K's snow bikes, not Sport Dimension's	Evid. 106, 403.
9	snow bikes.	Disputed: Pedersen never would
10		have talked to Rios had he known
11		SD was contemplating a snow bike
12		of its own.
13		SD's Evidence: Brooks Decl. Ex. 1
14		at 103:15-105:6.
15		T4K's Evidence: Pedersen Decl. ¶
16		27.

18		
19	ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE
20		
21	121. Tech-4-Kids' snow bikes, also referred to	Pedersen Decl. ¶ 2.
22	as the Snow Moto, were the first of their	
23	kind in that they are sleds featuring three	
24	small skis on the bottom and are designed	
25	and modeled after full-sized motorized	
26	snowmobiles.	
27	122. The Snow Moto has an adjustable seat,	Pedersen Decl. ¶ 4.

1		protective handle bars, a primarily	
2		decorative nose piece, suspension,	
3		braking system and licensed graphics.	
4	123.	The Snow Moto was named the 2007	Lawrence Decl. Ex. DD
5		Hardline Licensed Item of the Year by the	(T4KP001305-06); Pedersen Decl.
6		Licensing Industry Manufacturers	¶ 5.
7		Association.	
8	124.	The Snow Moto was a highly successful	Pedersen Decl. ¶ 6.
9		product for Tech-4-Kids, which was a	
10		small company when the product first	
11		launched in 2007. At that time, Tech-4-	
12		Kids had only a few employees and	
13		generated a small amount of revenue.	
14	125.	In 2009, Tech-4-Kids first sold the Snow	Lawrence Decl. Ex. D (Pedersen
15		Moto to Costco U.S. as part of a test sale	Tr. 52:18-53:7); Ex. L (Weenink
16		program that was extremely successful.	Tr.137:16 -138:4); Ex. G (Smick
17			Tr. 112:7-25); Pedersen Decl. ¶ 9.
18	126.	The following year, in 2010, Costco U.S.	Pedersen Decl. ¶ 9.
19		originally purchased 30,000 Snow Moto	
20		units. Because it was on pace to sell out	
21		of its Snow Moto inventory, Costco U.S.	
22		subsequently ordered approximately	
23		7,000 more Snow Moto units that same	
24		season.	
25	127.	Early point-of-sales statistics in 2010	Lawrence Decl. Ex. L (Weenink
26		indicated that Costco U.S. would sell out	Tr. 154:5-12); Pedersen Decl. ¶ 9.
27		of the Snow Moto even before reaching	

1		the peak sales period in December.	
2	128.	In order to meet demand, Costco U.S.	Lawrence Decl. Ex. L (Weenink
3		ordered additional units at the last minute,	Tr. 154:1-12).
4		purchasing a total of approximately	
5		37,000 units of the Polaris model in 2010.	
6	129.	Stallion Sport Ltd. is a Hong Kong	Lawrence Decl. Ex. A (Lin Tr.
7		company owned by Joseph Lin's brother.	64:14-22).
8	130.	Prior to being introduced to Tech-4-Kids'	Lawrence Decl. Ex. C (Rios Tr.
9		Snow Moto, Sport Dimension never had a	39:9-23).
10		snow bike product in its lineup.	
11	131.	By 2009, Tech-4-Kids had already	Pedersen Decl. ¶ 8.
12		experienced substantial success in selling	
13		its snow bike products in Canada, due in	
14		part to its existing relationship with	
15		Costco Canada and Canadian Tire	
16		Corporation. Tech-4-Kids also	
17		successfully sold its snow bikes to Wal-	
18		Mart U.S. and Canada.	
19	132.	On Friday February 27, 2009, Rios	Lawrence Decl. Ex. D (Pedersen
20		contacted Pedersen about entering into a	Tr. 40:17-42:20).
21		possible business relationship.	
22	133.	At first, Pedersen was wary of SD's	Lawrence Decl. Ex. D (Pedersen
23		overture because of its reputation in the	Tr. 40:17-42:20).
24		industry for predatory business practices	
25		and "knocking off" other companies'	
26		products.	
27	134.	When discussions began, Pedersen	Lawrence Ex. E (SDI 001240).

1	explained to Rios that Tech-4-Kids would	
2	only enter into a distribution agreement	
3	that exposed it to new U.S. retailers as	
4	opposed to retailers with whom Tech-4-	
5	Kids had a preexisting relationship.	
6	135. A two-week email dialogue ensued, with	Lawrence Ex. E (SDI 001240-47).
7	the subject line "USA Distribution."	
8	136. In his initial March 3, 2009 email, Rios	Lawrence Ex. E (SDI 001247).
9	stated to Pedersen that Sport Dimension	
10	"would hope that we could come to some	
11	agreement so that we could make sales	
12	calls this year before all commitments	
13	have been made."	
14	137. In a subsequent March 4, 2009 email in	Lawrence Ex. E (SDI001246).
15	the same chain, Rios stated to Pedersen	
16	that Sport Dimension "would like to offer	
17	all three of [Tech-4-Kids' snow bike]	
18	brands as it makes sense for your existing	
19	distribution and where it would make	
20	sense to us if we had to offer an	
21	exclusive." Rios also stated that Sport	
22	Dimension "would like to get started as	
23	soon as [it] can."	
24	138. In the same email, Rios stated that "I look	Lawrence Ex. E (SDI 001244).
25	forward to us being able to speak	
26	tomorrow and hopefully put an agreement	
27	together." Rios also stated "We reviewed	

	the cost sheet that you sent us and worked from Retail to a Cost or back to see if we could put some sort of deal in place or arrangement.”	
139.	In a subsequent March 10, 2009 email, Rios again stated “I hope that we can put a deal together.”	Lawrence Ex. E (SDI 001242).
140.	In a March 9 email, Pedersen wrote: “Assuming we get there [i.e., reach agreement], before the end of the week, we can arrange some samples to be sent to you.”	Lawrence Decl. Ex. E (SDI 001244).
141.	In a March 9, 2009 email, Pedersen rejected Rios’s previous proposal of \$30 per unit and counter-proposed \$31.50 for the X-Games Snow Moto and \$33.25 for the Ski-Doo and Polaris brands.	Lawrence Decl. Ex. E (SDI 001243).
142.	On March 10, Rios accepted these prices.	Lawrence Decl. Ex. E (SDI 001243).
143.	However, in light of Rios’s refusal to pay an advance, Pedersen proposed increased pricing of \$33.50 for the X-Games brand and \$35.50 for the Ski-Doo and Polaris models as well as a \$3.00 fee for shipping samples.	Lawrence Decl. Ex. E (SDI 001241).
144.	Rios accepted the new pricing and shipping fee on March 17, 2009.	Lawrence Decl. Ex. E (SDI 001240).

145.	In response to Pedersen's expressed intention to exclude from the distribution deal any U.S. retailers with whom Tech-4-Kids already had a relationship, in his March 9 email, Pedersen identified as "off limits" to Sport Dimension the following retailers: Costco, Dick's Sporting Goods, Wal-Mart, K-Mart, and B.J.'s Wholesale.	Lawrence Decl. Ex. E (SDI 001243).
146.	On March 10, Rios confirmed this list of off limit accounts with the single variation of specifying only Costco Canada as opposed to Pedersen's generic reference to "Costco."	Lawrence Decl. Ex. E (SDI 001242).
147.	Later that same day, Pedersen corrected Rios's attempt to include only Costco Canada.	Lawrence Decl. Ex. E (SDI 001242).
148.	Pedersen stated that "your list of accounts is correct except as it stands now we will also handle Costco" (meaning Costco U.S.).	Lawrence Decl. Ex. E (SDI 001241).
149.	In his March 9 email, Pedersen asked for a minimum purchase commitment of 3200 Snow Moto units. On March 10, Rios rejected the minimum purchase request but committed to "try and sell as much as we can."	Lawrence Decl. Ex. E (SDI 001243).

1	150.	Multi-year distribution relationships are	Lawrence Decl. Ex. G (Smick Tr.
2		standard in the industry.	19:1-21:23); Pedersen Decl. ¶ 24.
3	151.	Manufacturers and wholesalers generally	Pedersen Decl. ¶ 25.
4		schedule their product pitches to retailers	
5		in December through March (sometimes	
6		going into May) for the next snow season.	
7		Winter products are typically shipped to	
8		retailers around August and the	
9		merchandise is generally shelved in	
10		September for the upcoming winter	
11		season.	
12	152.	Pedersen also offered to make marketing	Lawrence Decl. Ex. E (SDI
13		information available to assist Sport	001244); Pedersen Decl. ¶ 10.
14		Dimension in its distribution efforts. Rios	
15		responded to the marketing information	
16		offer on March 10, stating: "Thanks and	
17		appreciated, any support to help us	
18		become experts in your category of	
19		products would be appreciated. In	
20		closing, we see this as a great opportunity	
21		to help get more exposure for your	
22		product in the market."	
23	153.	Following a request by Rios for samples	Lawrence Decl. Ex. E (SDI
24		of the various Snow Moto models, on	001240).
25		March 17, 2009 Rios wrote: "Brad, We	
26		are good to go. We accept your new	
27		higher prices listed below along with	
28		\$3.00 service fee for shipping." 41	

154.	In the same March 17, 2009 email, Rios stated “I will update [sic] you as we progress.”	Lawrence Decl. Ex. E (SDI 001240).
155.	Pedersen responded to that March 17, 2009 email from Rios stating that he was “[g]lad to move forward.”	Lawrence Decl. Ex. E (SDI 001240).
156.	The pricing that the parties ultimately agreed upon is, to date, the lowest special wholesale pricing that Tech-4-Kids has offered to any distributor or retailer for the Snow Moto product.	Pedersen Decl. ¶ 13.
157.	On March 27, 2009, Sport Dimension prepared a Sam’s U.S. quote sheet with the pricing for the Ski-Doo brand Snow Moto.	Lawrence Decl. Ex. N (SDI 015731).
158.	On April 2, 2009, Rios sent an email with a price quote for the Ski Doo Snow Moto to Sam’s Club.	Lawrence Decl. Ex. I (SDI 015723).
159.	In that email, Rios wrote: “Please see the quote sheet for the Ski-Doo snow bike . . . As a vendor we are always being tasked with bringing Sam’s new exciting items, this is one of those.” Rios also proposed that Sam’s Club sell the product in its “top 100 snow clubs between Thanksgiving and Christmas.”	Lawrence Decl. Ex. I (SDI 015724).
160.	When Rios told Pedersen in July 2009	Lawrence Decl. Ex. H

1		that the Sam's Club sale had not gone	(T4KP000668); Lawrence Decl.
2		through, he stated: "Sorry this did not	Ex. C (Rios Tr. 269:20-270:19).
3		work out better for both of us, this is a	
4		good item, and maybe with a better retail	
5		climate we will have better luck next	
6		year," thus confirming to Pedersen that	
7		the distribution agreement would	
8		continue into the 2010 sales season.	
9	161.	In late March 2009, Tech-4-Kids'	Lawrence Decl. Ex. K (Richards
10		Director of Sales, Evert Weenink, learned	Ex. 14) (T4KP000004-5).
11		that Todd Richards had approached B.J.'s	
12		Wholesale, one of the retailers on the "off	
13		limits" list and offered for sale one of	
14		Tech-4-Kids' Snow Motos.	
15	162.	In an email string dated March 26, 2009,	Lawrence Decl. Ex. K (Richards
16		Pedersen informed Rios that Richards had	Ex. 14) (T4KP000004-5).
17		approached an "off limits" retailer and	
18		Rios apologized for the confusion stating	
19		that "it was clearly an error, we apologize	
20		and will clarify with the buyer that this is	
21		your business."	
22	163.	Richards subsequently came to	Lawrence Decl. Ex. J (Richards Tr.
23		understand that Rios had agreed not to	104:12-21).
24		approach certain retailers including B.J.'s	
25	164.	At Rios's instruction, Richards went back	Lawrence Decl. Ex. J (Richards Tr.
26		to B.J.'s and indicated that he could not	106:12-24).
27		offer the product and, instead, the product	

	could be procured from Tech-4-Kids.	
165.	Sport Dimension had hoped to earn a 30 to 35 percent profit margin on its sales.	Lawrence Decl. Ex. E (SDI 001246); Lawrence Decl. Ex. J (Richards Tr. 142:13-17).
166.	Lin admitted that Sport Dimension could not have offered Tech-4-Kids' products to Sport Dimension's customers absent permission from Tech-4-Kids to do so.	Lawrence Decl. Ex. A (Lin Tr. 240:13-18; 244 16-22).
167.	Pedersen offered to make marketing information available to assist Sport Dimension in its distribution efforts.	Lawrence Decl. Ex. E (SDI 001244).
168.	Pedersen provided Rios and Sport Dimension with additional materials meant to help Sport Dimension and market and sell the Snow Motos.	Lawrence Decl. Ex. R (Pedersen Ex. 5) (SDI 007034-35); Lawrence Decl. Ex. S (Pedersen Ex. 3) (SDI 001203-4); Lawrence Decl. Ex. T (SDI 001186-92).
169.	Rios and Richards would have had no reason to offer Tech-4-Kids' product unless there were an agreement that obligated them to do so or provided them with guaranteed access to the product that they were selling.	Lawrence Decl. Ex. A (Lin Tr. 240:13-18; 244:16-22).
170.	After it entered into the distribution agreement with Sport Dimension, Tech-4-Kids substantially reduced its efforts to sell the Snow Moto to U.S. retailers because it believed that Sport Dimension	Pedersen Decl. ¶ 15.

1		was pursuing those opportunities.	
2	171.	During 2009 and 2010, Tech-4-Kids only	Pedersen Decl. ¶ 16.
3		sold the Snow Moto to two additional	
4		U.S. retailers.	
5	172.	Gary Smick, one of Tech-4-Kids' outside	Lawrence Decl. Ex. G (Smick Tr.
6		sales representatives, primarily for Costco	163:5-164:16).
7		U.S. received an email blast from Tech-4-	
8		Kids to several of its sales representatives	
9		indicating that it would be selling the	
10		Snow Moto through a single U.S.	
11		distributor.	
12	173.	Smick recalls being upset because he	Lawrence Decl. Ex. G (Smick Tr.
13		interpreted the email to mean that he	163:5-164:16).
14		would be replaced for the Costco U.S.	
15		sales efforts which he had been working	
16		on for several months. When Smick	
17		called Evert Weenink, Weenink reassured	
18		him that Costco U.S. was excluded from	
19		the distribution deal.	
20	174.	On April 15, 2009, Pedersen emailed	Lawrence Decl. Ex. M
21		Rios with licensing information from X-	(T4KP000615).
22		Games and stated: "Could be interesting	
23		for sharing with your Sams buyer. I know	
24		you are looking at Ski Doo but we could	
25		do a different version for Sams of	
26		Xgames."	
27	175.	On May 5, 2009, Pedersen wrote to Rios:	Lawrence Decl. Ex. M

1		“We are gearing up for production and I	(T4KP000614).
2		wanted to check in with you on the status	
3		of the program for year. Let me know	
4		how you are making out and when you	
5		intend to start placing orders for ship	
6		dates.” Rios responded by indicating that	
7		Sport Dimension had some success in	
8		selling the Ski-Doo model to Sam’s.	
9	176.	On May 6, 2009, Pedersen asked Rios:	Lawrence Decl. Ex. M
10		“How are you making out at the other	(T4KP000615); Lawrence Decl.
11		[accounts]?” Rios responded that “Price	Ex. J (Richards Tr. 121:25, 127:1-
12		has been an issue” but asked Richards to	7).
13		provide a more complete update.	
14		Richards responded on May 8 by telling	
15		Pedersen that he had done “presentations”	
16		with “several” accounts who “all noted	
17		the same thing. There is not enough	
18		margin in the item and \$99 is definitely	
19		the ceiling retail place. Most buyers	
20		commented that they liked the item.”	
21	177.	On July 10, 2009, Pedersen asked Rios	Lawrence Decl. Ex. H (Richards
22		about the status of the Sam’s Club Test.	Ex. 16) (T4KP00667-68).
23		Rios responded: “Sorry for the lack of	
24		communication, the response time from	
25		Sam’s club has been very slow as well.	
26		They only confirmed last week that they	
27		will not be going forward with a test of	
28		the snow bike.”	

178.	Richards testified that under normal circumstances, when he is trying to sell an item to a retailer, he visits the potential customer in person and presents them with a picture or sample of the product.	Lawrence Decl. Ex. J (Richards Tr. 119:9-11, 15-16).
179.	Richards admitted that he failed to make the same efforts when he attempted to sell the Snow Moto. Richards testified that he made a single call to a limited number of retailers with whom he had relationships, never conducted any follow-up, and even failed to present the buyers that he contacted with a picture of the product that he was selling, and made an effort that he, himself, admitted to be half-hearted.	Lawrence Decl. Ex. J (Richards Tr. 111:2-25, 113:18-24, 114:218).
180.	Richards testified that he never even saw the sample Snow Motos sent by Tech-4-Kids.	Lawrence Decl. Ex. J (Richards Tr. 137:25, 138:8).
181.	When Sport Dimension was selling its own competing product to retailers, it provided the retailers with detailed presentation materials.	Lawrence Decl. Ex. Y (SDI 006996-7003).
182.	Rios offered the Snow Moto to only a single customer, Sam's Club, and priced the product at \$47.00.	Lawrence Decl. Ex. N (Rios Ex. 50) (SDI 015731-33).
183.	Richards admitted that Sport Dimension	Lawrence Decl. Ex. J (Richards Tr.

1		still could have made a profit if it had	149:14-150:13).
2		offered a price lower than \$47.00.	
3	184.	When Pedersen asked Rios for an update	Lawrence Decl. Ex. M
4		on sales, Rios stated that the retailers to	(T4KP000613).
5		whom Sport Dimension offered the	
6		product liked the product but felt “price	
7		was an issue.”	
8	185.	In the end, Sport Dimension failed to sell	Pedersen Decl. ¶ 26.
9		a single Snow Moto to any of Sport	
10		Dimension’s customers.	
11	186.	When Sport Dimension attempted to sell	Lawrence Decl. Ex. O (SDI
12		its own Yamaha product to Sam’s Club, it	013449).
13		offered the snow bike for the substantially	
14		lower price of \$36.00.	
15	187.	At no time from March 2009 to	Pedersen Decl. ¶ 12.
16		December 2009 did Rios or anyone at	
17		Sport Dimension disclose to Tech-4-Kids	
18		that Sport Dimension was contemplating	
19		developing a competing product.	
20	188.	Had Tech-4-Kids known of Sport	Pedersen Decl. ¶ 27.
21		Dimension’s duplicity, it never would	
22		have allowed Sport Dimension to pass	
23		itself off as Tech-4-Kids’ distributor,	
24		much less provide it with confidential and	
25		commercially sensitive information.	
26	189.	In January 2010, less than nine months	Lawrence Decl. Ex. P (Rios Ex.
27		after the parties entered into the	37) (SDI 001132).

1	distribution agreement and only five	
2	months after Rios told Pedersen that not a	
3	single retailer in the United States was	
4	interested in Tech-4-Kids' snow bikes,	
5	Sport Dimension had completed 90% of	
6	its development of a competing snow	
7	bike.	
8	190. In early 2010, Sport Dimension shipped	Lawrence Decl. Ex. P (Rios Ex.
9	samples to Costco Canada, but because it	37) (SDI 001132 – 35); Lawrence
10	was unable to brand the product in time, it	Decl. Ex. Q (SDI 001008).
11	did not successfully sell the Yamaha	
12	snow bike to Costco U.S. until the 2011	
13	season.	
14	191. Once it had a branded product for Costco,	Pedersen Decl. ¶ 29-30.
15	Costco stopped buying from Tech-4-Kids.	
16	192. In his March 9, 2009 email, Pedersen	Lawrence Decl. Ex. D (Pedersen
17	offered terms to Rios under specific	Tr. 150:15-23); Lawrence Decl.
18	headings which Pedersen intended to	Ex. E (SDI 001243).
19	constitute the proposed terms of an	
20	agreement.	
21	193. When Sport Dimension sold the Yamaha	Lawrence Decl. Ex. H (Richards
22	to Costco U.S. in early 2011, it did so at a	Tr. 212:12-18).
23	price that would have earned Sport	
24	Dimension significantly less than a 35	
25	percent profit margin.	
26	194. Rios claimed that he and Lin made the	Lawrence Decl. Ex. C (Rios Tr.
27	decision to develop a competing snow	39:11-13).
28		